

(1998) 10 KL CK 0008
In the High Court Of Kerala
Case No : O.P. No. 17436 of 1998-A

R. Natarajan

APPELLANT

Vs

State Transport Appellate Tribunal, Ernakulam and Others

RESPONDENT

Date of Decision : 07-10-1998

Acts Referred:

Constitution of India, 1950 — Article 226
Kerala Motor Vehicles Rules, 1989 — Rule 143, 158, 159(2)
Motor Vehicles Act, 1988 — Section 171, 70, 71, 72

Citation : AIR 1999 Ker 207

Hon'ble Judges : K.S. Radhakrishnan, J

Bench : Single Bench

Advocate : Dinesh Monon, for the Appellant; N. Raghu Raj, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Radhakrishnan, J.—The question that falls for consideration in this case is whether furnishing of particulars of a vehicle for stage carriage permit in the application form is a mandatory requirement and also whether the applicant need furnish the particulars before the actual grant of permit or before the issue of permit.

2. A Full Bench of this Court in, E.I. Narayanan and Others Vs. The Regional Transport Authority, Trichur and Others, had occasion to consider the scope of Section 46 of the Motor Vehicles Act, 1939, Rule 175 of the Kerala Motor Vehicles Rules 1961 and statutory form prescribed under Rule 175(a) and Rule 186(2) of the Motor Vehicles Rules. Full Bench held that on a combined reading of those provisions it becomes clear that there is no mandatory obligation cast on an applicant for the grant of a stage carriage permit to furnish in his application the particulars of the vehicle proposed to be used by him for operating the service in the event of the permit being granted in his favour. Bench further held that it would not therefore be legally right or proper to treat as invalid an application for a stage carriage permit which does not contain particulars of the vehicle

proposed to be used or to disqualify or supersede an applicant, who is otherwise found suitable for the grant of a permit, merely on the ground that he had not furnished in the application the particulars of the vehicle owned or possessed by him.

3. We have to consider the question raised in the instant case in the light of the provisions of the Motor Vehicles Act, 1988 and the Kerala Motor Vehicles Rules 1989. Motor Vehicles Act 1988 has liberalised the grant of stage carriage permit. The Act has also simplified the procedure by liberalising the grant for private sector operation in the road transport field.

4. Section 70 of the Act deals with the application for stage carriage permit which is extracted below:

"70. Application for stage carriage permit:--

(1) An application for a permit in respect of a stage carriage (in this Chapter referred as a stage carriage permit) or as a reserve stage carriage shall, as far as may be, contain the following particulars, namely:--

(a) the route or routes or the area or areas to which the application relates;

(b) the type and seating capacity of each such vehicle;

(c) the minimum and maximum number of daily trips proposed to be provided and the timetable of the normal trips.

Explanation:-- For the purpose of this section, Section 72, Section 80 and Section 102, "trip" means a single journey from one point to another, and every return journey shall be deemed to be a separate trip;

(d) the number of vehicles intended to be kept in reserve to maintain the service and to provide for special occasions;

(e) the arrangements intended to be made for the housing, maintenance and repair of the vehicles, for the comfort and convenience of passengers and for the storage and safe custody of luggage.

(f) such other matters as may be prescribed.

(2) An application referred to in Sub-section (1) shall be accompanied by such documents as may be prescribed."

The above mentioned provision says that the application for a permit in respect of a stage carriage or as a reserve stage carriage shall, as far as may be, contain the particulars mentioned in Clauses (a) to (f). Nothing in Clauses (a) to (e) cast an obligation on the applicant to furnish particulars of the vehicle proposed to be used for stage carriage service. Rule making authority may, however, under Clause (f) prescribe additional matters in respect of which also particulars should be furnished in an application for stage carriage permit. Legislature has also used the words "as far as may be" in Section 70. The words "as far as may be" tones

down the rigour of the word "shall", a word which is normally considered as mandatory. Words "as far as may be", "so far as may be", "as far as possible", "as far as practicable" etc. when used in statutes would lessen the rigour of the rule in giving meaning to the extent it is possible, and thereby gives little bit of flexibility to the statutory provisions. In this connection reference is made to decisions in, *Municipal Council, Ajmer v. Satya Narain* ILR (1962) Raj 693 AIR 1943 277 (Nagpur); *Smt. Rani Vs. Deputy Director of Consolidation, Bareilly and Others*, *State of Kerala v. Idicula* 1980 KLT 120 and AIR 1977 251 (SC)

5. Rule 143 of the Kerala Motor Vehicles Rules 1989 deals with application for permits. It prescribes statutory form for submitting application for stage carriage, that is, form No. P.St. S.A. Rule 143 is extracted below for easy reference;

"143. Application for permits:-- The application for a permit shall be in the following forms:

- (a) Stage carriage Form P.St. S.A.
- (b) Contract carriage Form P.Co. S.A.
- (c) Private service vehicle permit Form P.Pr. S.A.
- (d) Goods carriage Form P.Gd. S.A.
- (e) Temporary permit Form P.Tem.A.
- (f) Special permit u/s 88(8) of the Act . From P.Sp.A."

In the instant case, we are concerned with the application submitted under Clause (a) of Rule 143. Requirement as to the particulars indicated in the above mentioned statutory form have to be read as having been prescribed within the meaning of Clause (f) of Section 70 which had used the expression "as far as may be". Therefore an application for permit shall as far as may be, contain particulars mentioned in the statutory form referred to above. Another provision which is useful for resolving the question in Rule 159 which is extracted below:

"159. Permits-Entry of registration marks compulsory-Time for entry- (1) No permit shall be issued before entering the registration mark of the vehicle to which it relates has been entered therein.

(2) When the applicant is unable to produce the certificate of registration on the date of his application for permit, owing to the fact that he is not on that date in possession of the vehicle duly registered, or for some other reason, the applicant shall within one month of the sanctioning of the application by the Transport Authority or such longer period or periods not exceeding four months in the aggregate as the authority may specify, produce the certificate of registration of the vehicle before that authority so that the particulars of the registration mark may be entered in the permit. In the event of any applicant failing to produce the certificate of registration within the period specified by the Transport Authority,

the Authority may revoke its sanction of the application.

(3) The power vested in a Transport Authority under Sub-rule (2) shall also be exercised by its delegatee in respect of orders passed under the delegated powers."

6. Petitioner in the instant case submitted an application for regular permit on the route Kozhikode Malampuzha. Application was considered by the Regional Transport Authority in its meeting held on 10-11-1997. Application was rejected stating as follows:

"Heard. No vehicle offered by the applicant. Concurrence from RTA Malappuram and Kozhikode is not received. The sector of the route is saturated with services finding it very difficult to provide more services with sufficient time gap. Hence rejected."

Aggrieved by the above mentioned order petitioner preferred appeal, M.V.A.A. No. 61 of 1998 before the S.T.A.T. Ernakulam. Tribunal dismissed the same stating as follows;

"However, non-offering of vehicle is a ground to deny permit. Permit is granted to a vehicle. Unless the vehicle is offered no permit can be obtained. Rule 159 of the Motor Vehicles Rules speaks of production of current records. It has nothing to do with offering of a vehicle. Unless there is a vehicle no permit can be granted. Even at the appellate stage the appellant has got no vehicle to be offered."

Aggrieved by the above findings of the R.T.A. as well as S.T.A.T. petitioner has preferred this writ petition.

7. The principal contention raised by counsel for petitioner Sri. I. Dinesh Menon is that furnishing of particulars in the application for permit as well as production of vehicle before the grant of permit are not mandatory requirements. Relying on Rule 159(2) of the Kerala Motor Vehicles Rules, counsel contended that the particulars of the vehicle need be furnished only within one month of the grant of permit by the authority or before the extended time.

8. Learned Government Pleader Sri N. Raghuraj, on the other hand, contended that applicant is legally obliged to give the entire particulars in the application form itself. He tried to distinguish the Full Bench decision pointing out that Full Bench was dealing with a statutory form PSPA, which was prescribed under Rule 175 of the old Act. According to the learned Government Pleader, in the prescribed form under Rule 143(a) of the new Kerala Motor Vehicles Rules item 16 which appeared in the earlier form was omitted. Item 16 figured in the earlier form PSPA is extracted below for easy reference.

"I/We have come in possession of the vehicle on I/We have not yet obtained possession of the vehicle and I/We understand that the permit will not be issued until I/We have done so and have produced the certificate of registration."

Learned Government Pleader submitted since the above mentioned item was omitted in the new form, the rule making authority was intending to make the requirements mandatory; that is, disclosure of particulars in the application form itself when it is submitted. ;

9. Full Bench of this Court in E.I. Narayanan and Others Vs. The Regional Transport Authority, Trichur and Others, dealt with almost identical provision" which we get in the Motor Vehicles Act 1988 and in the Motor Vehicles Rules 1989 except item No. 16 referred to above. Reference was also made by the Full Bench to Rule 186 of the old Act, which is Rule 159 of the present Rules. On a combined reading of the above mentioned provisions the Full Bench held that there is no mandatory obligation cast on an applicant for the grant of a stage carriage permit to furnish in his application the particulars of the stage carriage vehicle proposed to be used by him for operating the service in the event of the permit being granted in his favour. However, an applicant has to furnish all the details before the application is taken up for consideration by the Regional/State Transport Authority. I am of the view mere omission of item No. 16 in P.St. S.A. form under Rule 143(a) of the Kerala Motor Vehicles Rules would not make the above mentioned provisions mandatory. This is particularly so, since the statute itself has used the expression "as far as may be" in Section 70 of the Motor Vehicles Act 1988 which takes in Rule 143(a) also.

10. The procedure to be followed by the RTA in considering the application for stage carriage permit is dealt with in Section 71 of the new Act. The main consideration required to be taken into account for granting a permit are the interest of the public in general and the advantages to the public of the service to be provided, and these would include inter alia consideration of factors such as the experience of the rival claimants, their past performance, the availability of standby vehicles with them, their financial resources, the facility of well equipped workshop possessed by them etc. RTA while considering the application for grant is acting as a quasi judicial authority and hence the necessity of having all details of the parties including particulars of vehicle offered by the various applicants when application comes up for consideration. While granting permit by the Regional/State Transport Authority there should be a comparative evaluation of the qualifications possessed by the applicants as on the date of consideration of the grant of permit. On the date of consideration of the applications, if an applicant is found to be possessed of a better model vehicle of the required specifications and in respect of other matters he is found to be possessed of better qualifications, than the rival applicant who might have furnished the particulars of his vehicle in his application itself, it would not be in the public interest, and hence also legally not right to overlook the superior claims of the former and prefer the latter for the grant of the permit merely on the ground of his having furnished in his application particulars of his vehicle. Section 72 of the Act says that RTA can grant stage carriage permit in accordance with the application or with such modification as it deems fit. RTA u/s 72(2) can grant permit for a stage carriage of a specified description.

11. Therefore on a conjoint reading of Sections 70, 71, 72 and Rule 143 would indicate that even though it is not mandatory on the part of an applicant to furnish the particulars of the vehicle in the application when it is submitted, he is legally obliged to furnish all the particulars of the vehicle before the application is taken up for consideration by the Regional/State Transport Authority. Therefore, furnishing of all the particulars of the vehicle before the actual grant is made by the RTA is a mandatory requirement. 12. Now we have to understand the meaning of Rule 159(2) in the light of the above mentioned findings. Rule 159 has already been extracted hereinbefore. The heading of the rule makes entry of registration marks in the permit compulsory and also deals with the time for entry. Headings or titles prefixed to a rule can be referred to in construing a Rule if there is ambiguity. A heading, at times is regarded as giving the key to the interpretation of the clauses ranged under it. As held by the Supreme Court in, H.M. Kamaluddin Ansari and Co. Vs. Union of India (UOI) and Others, , it could be relied upon when section is vague and ambiguous. In Bhinka and Others Vs. Charan Singh, . Supreme Court held that the heading prefixed to sections or sets of sections in some modern statutes are regarded as preambles to those sections. They cannot control the plain words of the statute but they may explain ambiguous words. In the instant case we have to understand the meaning of Rule 159(2) in the light of the various other statutory provisions of the Act such as Sections 70, 71, 72 and Rule 143 and the meaning given by the Full Bench to similar statutory provisions to the Motor Vehicles Act, 1939. Rule 159(2) deals with the inability of the applicant to produce the certificate of registration on the date of his application for permit owing to the fact that he is not on that date in possession of the vehicle duly registered or for some other reason, in the event of which the applicant was given time to produce the registration certificate of the vehicle before the authority so that the particulars of the registration mark may be entered in the permit. The emphasis is on the entry of the particulars in the permit. There is nothing in Rule 159 to suggest that the applicant need not produce the particulars of the vehicle before the grant of permit by RTA. The words "applicant shall within one month of the sanctioning of the application.... produce the certificate of registration" would suggest that it is the production of current records like certificate or registration etc. If any other meaning is attributed it will go against the other provisions of the statute which I have already dealt with. Therefore Sections 70, 71, 72 and Rules 143, 159(1) would indicate that Rule 159(2) is only for production of current records so as to mark the particulars of the vehicle in the permit before actual issue of the permit by the authority, which is compulsory.

13. I have already found that giving particulars of the vehicle in the application form is not a mandatory requirement but production of particulars of the vehicle on or before the matter is taken up for consideration before the RTA is mandatory requirement. Full Bench opined that in a case where an applicant has given all details in his application for stage carriage permit and kept the vehicle all along available, as against the applicant who did not give particulars of the

vehicle in the application and did not keep the vehicle available all along, but gave particulars at the time of consideration of application, the former can have a march over the latter if the other qualifications are equal. In other words, in a given case the vehicle offered by both the applicants is substantially of the same type, quality, model etc. and if in respect of other matters, both the applicants are equally qualified, it will be open to the Regional/State Transport Authority in its discretion to prefer for the grant the applicant who had furnished the particulars of his vehicle in the application itself, treating the said circumstance as a ground for tilting the balance as between the two persons whose qualifications are equal in all other respects. In other words, giving particulars of the vehicle in the application itself can tilt the balance in favour of that applicant, if all other qualifications are equal. If that is done, as held by the Full Bench in Narayanan's case (AIR 1980 Ker 119) (supra) a preference by the RTA/STA of such an applicant cannot be described as illegal exercise of jurisdiction or illegal so as to be interfered with by this Court under Article 226 of the Constitution of India.

14. On the basis of the above mentioned findings the following principles could be laid down.

1. The principle laid down by the Full Bench decision reported in 1980 KLT 249 holds good even after the coming into force of the Motor Vehicles Act, 1988 and Kerala Motor Vehicles Rules, 1989.

2. A combined reading of Sections 70, 71, Rules 143, 159 etc. would show that it is not mandatory to furnish the particulars of the vehicle in the application form at the time of its submission.

3. However, it is mandatory on the part of the applicants to furnish particulars of the vehicle propose to be used as a stage carriage on or before the matter comes up for consideration before the RTA/STA as held by the Full Bench decision.

4. Rule 159 speaks of only production of documents or current records before issue of permit so as to enter the particulars in the permit. However, the applicant should furnish particulars of vehicle when the matter is taken up by the RTA/STA for consideration or before that.

5. Furnishing of details of the vehicle in the application and keeping the vehicle idle/available all along and if other qualifications are better or equal such an applicant will have a march over those applicants who failed to furnish the particulars at the time of submission of the application. This is the principle laid down by the Full Bench also.

In the instant case in the light of the above mentioned reasons the Regional Transport Authority and the State Transport Appellate Tribunal rightly rejected the petitioner's application since petitioner failed to furnish particulars of the vehicle before the matter was taken up for consideration by the RTA.

Original petition lacks merits and the same is dismissed.